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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILLIP ALLEN BAILEY,

Defendant.

CASE NO. 2:19-CR-0231-08 WBS

STIPULATION REGARDING USE OF
VIDEOCONFERENCING DURING JUDGMENT
AND SENTENCING HEARING; FINDINGS AND
ORDER

DATE: November 22, 2021
TIME: 9:00 a.m.
COURT: Hon. William B. Shubb

BACKGROUND

On December 19, 2019, a grand jury indicted the defendant, Phillip Allen Bailey, on five counts of a 13-count indictment, along with eight co-defendants. ECF No. 59. On March 22, 2021, Bailey pled guilty to Count One, pursuant to a written plea agreement. *See* ECF Nos. 158, 160.

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act empowered the Judicial Conference of the United States and Chief District Judges to authorize plea and sentencing hearings by video or telephonic conference when 1) such hearings “cannot be conducted in person without seriously jeopardizing public health and safety;” and 2) “the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice.” *Id.*, Pub. L. 116-23 § 15002(b)(2).

1 On March 29, 2020, the Judicial Conference of the United States made the findings required by
2 the CARES Act, concluding that “emergency conditions due to the national emergency declared by the
3 President under the National Emergencies Act (50 U.S.C. § 1601, et seq.) with respect to the
4 Coronavirus Disease 2019 (COVID-19) have materially affected and will materially affect the
5 functioning of the federal courts generally.”

6 On March 30, 2020, the Chief Judge of this District, per General Order 614, also made the
7 findings required by the CARES Act: “[F]elony pleas under Rule 11 of the Federal Rules of Criminal
8 Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be
9 conducted in person without seriously jeopardizing public health and safety.” On June 29, 2020,
10 September 30, 2020, January 4, 2021, April 2, 2021, and July 1, 2021, and September 28, 2021, the
11 Chief Judge of this District, per General Orders 620, 624, 628, 630, 632, and 635, reaffirmed these
12 findings and authorized videoconferencing under the CARES Act for another 90 days. Accordingly, the
13 findings of the Judicial Conference and General Orders 614, 624, 628, 630, 632, and 635 establish that
14 plea hearings cannot take safely take place in person.

15 In order to authorize change of plea hearings by remote means, however, the CARES Act—as
16 currently implemented by General Order 635—also requires district courts in individual cases to “find,
17 for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without
18 serious harm to the interests of justice.” General Order 635 further requires that the defendant consent
19 to remote proceedings. Finally, the remote proceeding must be conducted by videoconference unless
20 “videoconferencing is not reasonably available.” In such cases, district courts may conduct hearings by
21 teleconference.

22 The parties hereby stipulate and agree that each of the requirements of the CARES Act and
23 General Order 635 has been satisfied in this case. They request that the Court enter an order making the
24 specific findings required by the CARES Act and General Order 635. Specifically, for the reasons
25 further set forth below, the parties agree that:

26 1) The judgment and sentencing hearing in this case cannot be further delayed without
27 serious harm to the interest of justice and given the public health restrictions on physical contact; and
28

IT IS SO STIPULATED.

Dated: November 15, 2021

PHILLIP A. TALBERT
Acting United States Attorney

/s/ DAVID W. SPENCER
DAVID W. SPENCER
Assistant United States Attorney

Dated: November 15, 2021

/s/ MICHAEL L. CHASTAINE
MICHAEL L. CHASTAINE
Counsel for Defendant
PHILLIP ALLEN BAILEY

FINDINGS AND ORDER

1. The Court adopts the findings above.

2. Further, the Court specifically finds that:


a) The judgment and sentencing hearing in this case cannot be further delayed without serious harm to the interest of justice; and

b) The defendant has waived his physical presence at the hearing and consents to remote hearing by videoconference.

3. Therefore, based on the findings above, and under the Court's authority under § 15002(b) of the CARES Act and General Order 628, the judgment and sentencing hearing in this case will be conducted by videoconference.

IT IS SO FOUND AND ORDERED.

Dated: November 17, 2021


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE